



DECLARATION
AND
POWER OF ATTORNEY

As a below named inventors, we hereby declare that:

Our residences, post office addresses and citizenships are as stated below next to our names.

We believe we are the original, first and joint inventors of the subject matter which is claimed and for which a patent is sought on the invention entitled SURGICAL STAPLING INSTRUMENT HAVING MULTISTROKE FIRING WITH OPENING LOCKOUT, the specification of which

(check one)

is attached hereto.

was filed on September 29, 2003 as Application Serial No. 10/674,236.

We hereby state that we have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

We acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, § 1.56(a).

We hereby claim foreign priority benefits under Title 35, United States Code, §119(a)-(d) of any foreign application(s) for patent or inventor's certificate or of any PCT international applications designating at least one country other than the United States of America listed below and have also identified below any foreign application(s) for patent or inventor's certificate or any PCT international applications(s) designating at least one country other than the United States of America filed by us on the same subject matter having a filing date before that of the application(s) of which priority is claimed.

PRIOR FOREIGN APPLICATION(S) UNDER 35 U.S.C. 119(a)-(d)				
Number	Country	Filing Date	Priority Claimed	
			Yes	No

We hereby claim the benefit under Title 35, United States Code, § 119(e) of any United States provisional application(s) listed below:

CLAIM FOR BENEFIT OF PRIOR U.S. PROVISIONAL APPLICATION(S) UNDER 35 U.S.C. 119(e)	
Provisional Application Number	Filing Date

We hereby claim the benefit under Title 35, United States Codes, §120, of any United States application(s) or PCT international application(s) designating the United States of America that is/are listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in that/those prior application(s) in the manner provided by the first paragraph of Title 35, United States Code, §112, we acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, §1.56 that occurred between the filing date of the prior application(s) and the national or PCT international filing date of this application:

PRIOR U.S. APPLICATIONS OR PCT INTERNATIONAL APPLICATIONS DESIGNATING THE U.S. FOR BENEFIT UNDER 35 U.S.C. 120				
U.S. Applications		Status (check one)		
U.S. Applications	Filing Date	Patented	Pending	Abandoned

PCT APPLICATIONS DESIGNATING THE U.S.		
Application No.	Filing Date	U.S. Application No. Assigned (if any)

We hereby appoint David E. Franklin, Registration No. 39,194; Edwin R. Acheson, Jr., Registration No. 31,808; Stephen R. Albainy-Jenei, Registration No. 45,487; William E. Gallagher, Registration No. 35,145; Steven J. Goldstein, Registration No. 28,079; James M. Kipling, Registration No. 26,287; Kelly P. Moore, Registration No. 48,789; Victor C. Moreno, Registration No. 40,732; Ann G. Robinson, Registration No. 39,820; Ria Farrell Schalnat, Registration No. 47,058; David E. Schmit, Registration No. 28,472; Karlyn A. Schnapp, Registration No. 45,558; Ralph J. Skinkiss, Registration No. 26,105; and Kevin S. Sprecher, Registration No. 42,165; c/o Frost Brown Todd LLC, 2200 PNC Center, 201 East Fifth Street, Cincinnati, Ohio 45202 (513) 651-6800; Practitioners at Customer Number 000027777 and Dean L. Garner, Registration No. 35,877; Gerry Gressel, Registration no. 34,342; and Verne E. Kreger, Jr., Registration No. 35,231 our attorneys, with full power in each of them, of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.

We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of first inventor: Frederick E. Shelton IV

Inventor's Signature Frederick E. Shelton IV 2/19/04
(Date)

Residence: Hillsboro, Ohio
Citizenship: U.S.
Post Office Address: 245 East Main St., Hillsboro, OH 45133

Full name of second joint inventor: Jeffrey S. Swayze

Inventor's Signature Jeffrey S. Swayze 2-19-04
(Date)

Residence: Hamilton, Ohio
Citizenship: U.S.
Post Office Address: 7047 Birchley Drive, Hamilton, OH 45011

Full name of third joint inventor: Douglas B. Hoffman

Inventor's Signature Douglas B. Hoffman 2/19/04
(Date)

Residence: Harrison, Ohio
Citizenship: U.S.
Post Office Address: 10140 Baughman Road, Harrison, OH 45030

CinLibrary/1330704.2

21680.0517368